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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**

[REDACTED]

FILE:

MSC-05-298-10352

Office: HARTFORD

Date:

**APR 24 2008**

IN RE:

Applicant: [REDACTED]

APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "D. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the District Director, Hartford. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the file will be returned to the director for further consideration.

The applicant filed a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet on July 25, 2005. The applicant was scheduled to appear for an interview related to this application at the Hartford District Office on January 26, 2006. On January 25, 2006, the applicant submitted a request to reschedule his interview. The applicant noted that he is recovering from a recent surgery. The District Office granted the applicant's request and rescheduled his interview for June 19, 2006. On June 16, 2006, the applicant submitted another request to reschedule his interview. The applicant noted that he is in treatment with a doctor at Norwalk Hospital. On July 28, 2006, the director determined that the applicant's reschedule requests are not for good cause. The director found that the applicant failed to submit any supporting evidence with his requests. The director denied the application with a finding that it had been abandoned.

The regulation at 8 C.F.R. § 103.2(b)(13)(ii) provides if Citizenship and Immigration Services (CIS) requires an individual to appear for an interview, but the person does not appear, the application shall be considered abandoned and denied unless by appointment time CIS has received a change of address or rescheduling request that the agency concludes warrants excusing the failure to appear. Pursuant to this regulation, the director concluded that the applicant's second request to reschedule did not excuse his failure to appear. The applicant's first interview notice advised him that he would only be rescheduled once unless "verifiable documentation on an emergency is presented." The applicant failed to present such documentation with his second reschedule request. The director's denial of this application due to its abandonment may not be appealed to the AAO. 8 C.F.R. § 103.2(b)(15).

It should be noted that the director informed the applicant that he may file a motion to reopen pursuant to 8 C.F.R. § 103.5. On August 28, 2006, counsel for the applicant filed a motion to reopen with the Hartford District Office. Counsel submitted the applicant's medical records with this motion. The director's suggestion that the applicant may file a motion to reopen is in error and is withdrawn. The regulation at 8 C.F.R. § 245a.2(q) provides that motions to reopen a proceeding or reconsider a decision shall not be considered for applications filed under section 245A of the Act.

Since the AAO is without authority to review the denial of the application, the appeal must be rejected. However, the director is not constrained from reopening the matter *sua sponte* pursuant to 8 C.F.R. § 245a.2(q).



**ORDER:** The appeal is rejected and the file is returned to the director for further consideration pursuant to the above.